

FILE: INCOMING TELEX A

VM/SP CONVERSATIONAL MONITOR SYSTEM

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PWI JGN843 IN 05/04:37 OUT 05/04:50

952605 FTRU CH

*Barclay
Palmer*

OPERATOR PLEASE DISTRIBUTE THIS TELEX AT YOUR LOCATION
ACCORDING TO THE FOLLOWING LIST :

TO :
MR. L. POLLAK - PM NY

COPIES TO :

MR. B.B. BROOKS - PME EEC LAUSANNE
MR. S.C. DARRAH - PME EEC LAUSANNE
MR. F.H. DULLES - PME EEMA LAUSANNE
MR. G.C. ADKINS - PM NY
MR. A. PALMER JR - PM RICHMOND

NEUCHATEL 5TH JULY, 1985

SUBJECT : BARCLAY PATENT OPPPOSITION GERMANY AND SWITZERLAND

SINCE MY LAST TELEX TO YOU I HAVE RECEIVED A COPY OF A LETTER FROM ED. BAILEY DATED 2ND JULY, ADDRESSED TO DR. FELIX H. THOMANN IN BASLE, IN WHICH HE ASKS FOR AN ASSESSMENT OF THE BARCLAY SITUATION WITH REGARD TO NULLITY ACTION IN SWITZERLAND.

IN ADDITION, I HAVE RECEIVED A COPY OF A TELEX FROM ED. BAILEY ADDRESSED TO MR. KLAUS STORCH IN MUNICH, ALSO DATED 2ND JULY, 1985, IN WHICH HE ASKS HIM TO GET INVOLVED WITH THE BARCLAY OPPPOSITION IN GERMANY.

IN ORDER TO AVOID ANY MISCONCEPTIONS, I WOULD LIKE TO EXPLAIN TO YOU THE PRESENT STATE OF THE ISSUES IN ORDER TO MAKE SURE THAT THE OPINIONS RENDERED BY OUTSIDE COUNSEL ARE INDEED INTERPRETED AND USED IN THE BEST INTEREST OF OUR COMPANY.

IN GERMANY, REPRESENTED BY DR. HACH, WE OPPOSED THE BROWN AND WILLIAMSON PATENT IN THE PATENT OFFICE WHO, AS A CONSEQUENCE, REJECTED IT. BROWN AND WILLIAMSON THEN APPEALED AT THE PATENT COURT IN MUNICH, WHO THEN RESTORED THE VALIDITY OF THE PATENT. WE WENT BACK TO THE PATENT OFFICE WHO SCRAPPED THE BROWN AND WILLIAMSON PATENT. PRESENTLY, BROWN AND WILLIAMSON HAVE FILED A SECOND APPEAL AND HAVE BEEN GIVEN THE DEADLINE OF 13TH JULY, 1985, TO SUBMIT THEIR EVIDENCE. WE KNOW THAT THEIR CHANCES TO SUCCEED ARE EXTREMELY SLIM, VIRTUALLY NON-EXISTENT.

1505 JUL -6 PM 4:48
PHILIP MORRIS INC
N.Y.C.

TELEX ROOM

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BETWEEN 30TH MARCH, 1981 AND 30TH JUNE, 1985, WE HAVE SPENT DM 42'254.- ON THIS ACTION IN GERMANY. OUR AIM WAS TO COMBINE MAXIMUM EFFICIENCY WITH MINIMUM COST. THIS IS WHY I AM REALLY SURPRISED TO SEE ED. BAILEY SUDDENLY, AND AT THIS LATE STAGE OF THE GAME, WANTING TO INVOLVE MR. STORCH, FOR WHOM I HAVE GREAT PERSONAL RESPECT. APART FROM ANY ETHICAL CONSIDERATIONS, I.E. TO TAKE WORK AWAY FROM DR. HACH ON A CASE FOR WHICH HE HAD BEEN CONTRACTED BY US, I CAN ONLY SEE ADDITIONAL EXPENSE FOR THE COMPANY. IN ANY CASE, I HOPE THAT MR. STORCH'S FEES ARE BEING PAID BY NEW YORK AS WE HAVE A VERY TIGHT BUDGET OVER HERE.

AS FAR AS THE SWISS CASE IS CONCERNED, WE HAVE CAREFULLY SCREENED THE LAWYERS AVAILABLE IN ZURICH AND WE HAVE CHOSEN DR. DAVID AFTER CAREFUL CONSIDERATION. THE MATERIAL IS BASICALLY THE SAME AS FOR GERMANY AND REQUIRES VERY LITTLE RE-ARRANGEMENT OR ADAPTATION. THE ESTIMATES WE WERE GIVEN BY DRs. DAVID AND HACH WERE : MINIMUM SW.FRS. 30'000.- AND A MAXIMUM IF THE PROCEDURE DRAWS OUT SW.FRS. 600'000.-.

WE COULD HAVE EVEN PREPARED THE ZURICH ACTION IN A WAY TO MAKE IT SUBSTANTIALLY CHEAPER, AS ED. BAILEY AND DR. THOMANN ARE UNABLE TO APPRECIATE, BECAUSE THEY HAVE NOT BEEN INVOLVED, THE ONGOING UNFAIR COMPETITION CASE IN GENEVA HAS A SUBSTANTIAL BEARING ON THE POTENTIAL PATENT CASE IN ZURICH. THE JOINT PLAINTIFFS IN GENEVA, OF WHOM WE ARE ONE, HAVE REQUESTED CONSIDERABLE DAMAGES FROM BAT. THIS SUM, WHICH OBVIOUSLY RELATES TO THE COMMERCIAL VALUE OF BARCLAY, IS BOUND TO BE IN SOME TIGHT RELATIONSHIP WITH THE VALUE OF THE PATENT CONTESTED IN ZURICH. AS THE EXPENSES RELATING TO A COURT PROCEDURE ARE RELATED TO THE CONTESTED SUMS OF MONEY, WE HAD TO OPT FOR AN APPROPRIATE AMOUNT IN ZURICH IN ORDER TO BE CONSISTENT WITH OUR CLAIMS IN GENEVA, AND, AS YOU WILL APPRECIATE, WE WOULD GO TO GREAT TROUBLE TO PRESERVE THIS CONSISTENCY. IN FACT, DRs. HACH AND DAVID WERE ADVISED BY THE ATTORNEYS WHO REPRESENT US IN GENEVA.

THE INVOLVEMENT OF DR. THOMANN, REQUESTED BY ED. BAILEY, IS LIKELY TO GIVE YOU CONSIDERABLE ADDITIONAL COST. IT IS INTERESTING TO LEARN THAT DR. THOMANN ESTIMATES THE EXPECTED EXPENSE TO BE IN THE ORDER OF TWO MILLION SWISS FRANCS.

OBVIOUSLY SOMEBODY IS ONTO A GOOD THING SOMEWHERE.

I LOOK FORWARD, WITH GREAT ANTICIPATION, TO RECEIVING YOUR DRAFT PAPER ON THE FUTURE WORKING RELATIONS BETWEEN YOURSELF, ART PALMER JR., OURSELVES AND THE OUTSIDE COUNSELS. I FEEL MORE THAN EVER THE NEED FOR CLEAR PATHWAYS OF COMMUNICATIONS, OTHERWISE WE ARE GOING TO END UP IN A TERRIBLE MUDDLE (TOO MANY COOKS SPOIL THE BROTH).

KIND REGARDS AND BEST WISHES.

HELMUT W. GAISCH

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